UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRTEENTH REGION

ADVENTIST GLENOAKS HOSPITAL

Employer

13-RC-21289

and

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 399, AFL-CIO-CLC

Union

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing on this petition was held on January 11, 2005 before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.[1]

I. ISSUE

The Employer in this case, Adventist Glenoaks Hospital, submits that is its not subject to the jurisdiction of the National Labor Relations Act by virtue of the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. Section 2000(bb) et seq., and the free exercise and establishment clauses of the First Amendment of the United States Constitution. The Employer recognizes that the Board has previously asserted jurisdiction over a sister health care organization owned and operated by the Seventh Day Adventist Church in *Ukiah Adventist Hospital*, 332 NLRB 602 (2000), but maintains that the Board's decision was wrongly decided.

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[1] Upon the entire record in this proceeding, the undersigned finds:

a. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.
b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
c. The labor organization involved claims to represent certain employees of the Employer.
d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

II. DECISION

For the reasons discussed in detail below, I find that the Employer is a health care institution within the meaning of Section 2(14) of the Act and that it meets the commerce standards for the assertion of jurisdiction by the Board. Based on this finding; therefore,

IT IS HEREBY ORDERED that an election in the bargaining unit described below be conducted under the direction of the undersigned at a time and place to be set forth in a subsequently issued notice of election:

> All full time and regular part time skilled maintenance workers, HVAC mechanics and maintenance mechanics, employed by the Employer at its facility now located at 701 Winthrop Avenue, Glendale Heights, Illinois, but excluding all other employees, office clerical employees and guards, professional employees and supervisors as defined in the Act. [2]

III. STATEMENT OF FACTS AND ANALYSIS

The Employer in this case, Adventist Glenoaks Hospital (hereafter "Employer"), urges the Regional Director to decline jurisdiction in this case because its well-established religious beliefs regarding labor organizations prevent it from dealing with labor organizations. The Employer argues further that if the Regional Director were to direct an election, he would be violating the Religion clauses of the First Amendment as well as the RFRA, a statute designed to provide those rights greater protection from government interference.

The Board has previously found the assertion of its jurisdiction over similar institutions operated by the Seventh Day Adventist Church was not precluded by the First Amendment. *See Ukiah Adventist Hospital*, 332 NLRB 602, 605 (2000); *Mid American Health Services*, 247 NLRB 752 (1980); and *Cap Santa Vue Inc. v. NLRB*, 424 F.2d 883 (D.C. Cir. 1970). In *Ukaih*, a case factually identical to the instant matter, the Board applied a two-part test, mandated by the statute, to determine if the exercise of jurisdiction over a hospital, owned and operated by the same religious organization which is the subject of the instant case, violated the RFRA. Under that test, the Board first looks to whether the religious adherent has proved that a governmental regulatory mechanism burdens the adherent's practice of his or her religion by pressuring the adherent to commit an act forbidden by the religion. *Ukiah*, 332 NLRB at 603. If so, the Board must then decide whether assertion of the Board's jurisdiction is in furtherance of a compelling governmental interest, and is the least restrictive means of furthering that interest. *Id.*

[2] The Employer has stipulated that the unit described above is appropriate.

The Employer in this case, Adventist Glenoaks Hospital, is part of the Seventh Day Adventist Church (hereafter, the "Church"), a religious organization. Church policy, as a result of a well-established doctrinal belief of the Church, instructs members of the church and affiliated institutions to refrain from joining or financially supporting labor organizations and refrain from recognizing or bargaining with labor organizations.

The Employer does not impose any requirement that applicants and/or employees become members of the Church. Nor does the Employer require any employee to participate in religious worship. The majority of the employees that work for the Employer in the instant case are not members of the Church.

Applying the two-part test, the Board in *Ukiah* assumed for the purposes of deciding the case that asserting jurisdiction over the hospital operated by the Seventh Day Adventist Church creates a substantial burden on the employer's free exercise of religion within the meaning of the RFRA. *Ukiah*, 332 NLRB at 603. The Board also decided that there was a compelling interest in preventing labor strife and protecting the rights of employees to organize and bargain collectively, *Id.*, 332 at 603-604, and that applying the Act to the hospital was the least restrictive means of furthering that compelling interest. *Id.*, 332 NLRB at 605. Given the identical facts concerning the Church's operation of the Employer, it is appropriate to apply the same analysis here. Accordingly, I find that although the assertion of the Board's jurisdiction substantially burdens the Employer's free exercise of its religion, the Board has a compelling interest justifying such assertion of jurisdiction, and applying the Act to the Employer is the least restrictive means of promoting that interest.

The Employer acknowledges *Ukiah* sets forth the Board's jurisdiction standards for Church-operated hospitals, and that under those standards the Board would assert jurisdiction. The Employer's arguments thus boil down to its contention that *Ukiah* was wrongly decided and that *University of Great Falls v. NLRB*, 278 F.3d 1335 (D.C. Cir. 2002) sets forth the correct standard and mandates reversal of *Ukiah*. However, it has long

> been the Board's consistent policy for itself to determine whether to acquiesce in the contrary views of a circuit court of appeals or whether, with due deference to the court's opinion, to adhere to its previous holding unitl the Supreme Court of the United States has ruled otherwise. But it is not for a [Regional Director] to speculate as to what course the Board should follow where a circuit court has expressed disagreement with its views. On the contrary, it remains the [Regional Director's] duty to apply established Board precedent which the Board or the Supreme Court has not reversed.

Insurance Agents' International Union (Prudential Insurance Company of America), 119 NLRB 768, 773 (1957). Accordingly, I do not have the authority to accept the Employer's invitation to overrule the Board's clear precedent in this case. [3]

IV. CONCLUSION

Based on the foregoing and the entire record herein, I have found that: the exercise of the Board's jurisdiction in this case is not precluded by the Religion clauses of the First Amendment nor the RFRA Accordingly, I have directed an election herein in the unit set forth above.

V. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by International Union of Operating Engineers, Local 399, AFL-CIO-CLC.

VII. NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer

[3] The Employer also asserts that the test announced by the Court in *Boy Scouts v. Dale*, 530 U.S. 640 (2000) controls here. The Court in that case ruled that New Jersey's public accommodation law as applied to require the Boy Scouts to admit a homosexual into its organization violated the Boy Scouts' First Amendment right of association—its right not to associate with members it does not desire to admit into membership. *Id.*, 530 U.S. at 648. This right is not implicated here, as nothing in the Board's policy would require the Employer to admit anyone who holds different views into its religion. In any event, the record evidence that a majority of the Employer's employees are not members of the Church belies its concerns over its associative rights.

has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. Club Demonstration Services, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

VIII. LIST OF VOTERS

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the undersigned within 7 days from the date of this Decision. North Macon Health Care Facility, 315 NLRB 359 (1994). The undersigned shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 13's Office, Suite 800, 200 West Adams Street, Chicago, Illinois 60606 on or before **February 4, 2005**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

IX. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099-14th Street. N.W., Washington, DC 20570. This request must be received by the Board in Washington by **February 11, 2005** .

DATED at Chicago, Illinois this 28th day of January, 2005.

/s/ Roberto G. Chavarry
Roberto G. Chavarry
Regional Director
National Labor Relations Board
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CATS—Jurisdiction-Other